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6th Circuit: An Agreement that Shortens the Limitations Period for FLSA and EPA claims is not Enforceable Because it Deprives Employees of Rights Under Those Laws

August 13, 2013

The Sixth Circuit recently made clear in *Boaz v. FedEx, et al*., No. 12-5319, that an employer cannot shorten the time within which an employee can bring claims under the FLSA and EPA. In *Boaz*, the Sixth Circuit rejected an attempt by FedEx to shorten the limitations period of claims through an employment agreement provision by holding that the provision was void because it deprived the employee of her rights under the FLSA and the EPA. The decision reversed the district court's grant of summary judgment on the issue in FedEx's favor and sent the case back to the district court. The opinion is a good reminder of what an employer can get away with when it comes to claims under the FLSA.

When Plaintiff-Appellant Margaret Boaz was hired by FedEx in 1997, she signed an employment agreement that included the following clause:

To the extent the law allows an employee to bring legal action against Federal Express Corporation, I agree to bring that complaint within the time prescribed by law or 6 months from the date of the event forming the basis of my lawsuit, whichever expires first.

After changing positions several times through the years, Boaz sued FedEx in 2009 alleging that FedEx has violated (1) the Equal Pay Act (EPA) by paying her less than a male predecessor and (2) the Fair Labor Standards Act (FLSA) by failing to pay her overtime. Because Boaz's last paycheck—the last allegedly illegal activity—was issued more than six months before she filed suit, FedEx moved for summary judgment based on the provision in her agreement that shortened the limitations period of her claims to six months. The U.S. District Court for the Western District of Tennessee agreed with FedEx, and granted its summary judgment motion.

Though Boaz's last paycheck had indeed been issued more than six months before she filed suit, it had been issued within both statutes' three-year statutory limitations period. Thus, if she could get around the six-month limitation, she could proceed with her claims. In an attempt to do so, Boaz appealed to the Sixth Circuit and argued that the provision was void.

When the agreement was drafted, FedEx undoubtedly knew that an employee could not waive claims under the FLSA or the EPA so it tried to limit any potential exposure by shortening the limitations period. The three-judge panel would have none of it. Judge Kethledge began his opinion with the following sentence: “The Supreme Court held decades ago that an employee is not free to waive her claims under the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq*.” With that opener, FedEx had to know this one wasn't going to end well.

The court reversed the district court's grant of summary judgment because it held that the provision deprived Boaz of her statutory rights and was therefore void. The court reached back to the mid-1940's when the U.S. Supreme Court held in *Brooklyn Savs. Bank v. O'Neil*, 324 U.S. 697 (1945) that employees may not waive their

rights under the FLSA. The high court prohibited the waiver of such rights because it was concerned “that an employer could circumvent the Act's requirements—and thus gain a competitive advantage over its competitors—by having its employees waive their rights under the Act.”

Applying this longstanding precedent to this case, the court noted that Boaz “accrued a FLSA claim” every time she received an allegedly illegal paycheck over the last three years. And because her employment agreement would deprive her of bringing the claims she accrued before the six-month period in the agreement but after the three-year statutory period, the provision was “invalid.”

FedEx (and Quicken Loans via an amicus brief) had attempted to convince the court that because other courts have enforced agreements that shorten the limitations period for Title VII claims, it should allow the same for FLSA and EPA claims here. The Court didn't buy it, holding that (1) Title VII claims—unlike FLSA claims—can be waived, and (2) the rationale for prohibiting waiver of FLSA claims is not present for Title VII claims. The court explained that its second point was true because an employer who refuses to hire members of a certain race does not gain a competitive advantage by doing so, but an employer who pays employees less than minimum wage arguably gains a competitive advantage from doing so.

The court did note, however, that employees may waive their right to a judicial forum by agreeing to arbitrate their FLSA claims as long as the forum is a fair one.

Finally, the court explained that the same analysis applied to Boaz's EPA claims because the EPA was enacted as an amendment to the FLSA after the Supreme Court had ruled that FLSA claims could not be waived. Thus, the Court reasoned that “by folding the Equal Pay Act into the FLSA, Congress meant for claims under the Equal Pay Act to be unwaivable as well.”

Bottom Line: Remember these guidelines about FLSA and EPA claims: An employee can agree to arbitrate them and even to waive their ability to bring them as part of a class action, but they cannot waive them—which now clearly includes agreeing to shorten the time within with they can bring them. Though this was a Sixth Circuit opinion (applicable to Kentucky, Ohio, Michigan, Tennessee), other circuits may reach the same conclusion.